Board of Forestry and Fire Protection Title 14 of the California Code of Regulations

[Notice published July 28, 2000]

NOTICE OF PROPOSED RULEMAKING

Watershed Evaluation and Mitigation Addendum, 2000

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to adopt the following new sections of Title 14 of the California Code of Regulations (14 CCR):

§§ 916.13 [936.13, 956.13]	Watershed Evaluation and
	Mitigation Addendum (WEMA)
§§ 916.13.1 [936.13.1, 956.13.1]	Pre-Consultation
§§ 916.13.2 [936.13.2, 956.13.2]	Notice of Preparation of a WEMA
§§ 916.13.3 [936.13.3, 956.13.3]	Notice of Preparation of a WEMA –
	Distribution by Director
§§ 916.13.4 [936.13.4, 956.13.4]	WEMA Submitter Responsibility
§§ 916.13.5 [936.13.5, 956.13.5]	Evaluation Area
§§ 916.13.6 [936.13.6, 956.13.6]	Standards for WEMA Preparation
§§ <u>916.13.7 [936.13.7, 956.13.7]</u>	Contents of a WEMA
§§ 916.13.8 [936.13.8, 956.13.8]	Notice of Submission of a WEMA
§§ 916.13.9 [916.13.9, 956.13.9]	Submission of a WEMA
§§ 916.13.10 [936.13.10, 956.13.10]	Agency and Public Review of a
	WEMA
§§ 916.13.11 [936.13.11, 956.13.11]	Compliance Monitoring and
	Expanded Completion Report
§§ 916.13.12[936.13.12, 956.13.12]	Effectiveness Monitoring
§§ 916.13.13[936.13.13, 956.13.13]	Adaptive Management
§§ 916.13.14[936.13.14, 956.13.14]	Subsequent Plans within the WEMA
	Area
§§ 916.13.15[936.13.15, 956.13.15]	HCP Exemption

The Board of Forestry and Fire Protection (Board) proposes to amend the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board will hold a public hearing starting at 9:00 a.m., on Wednesday, September 13, 2000 at the Resources Auditorium, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m., on Monday, September 11, 2000. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

All written comments shall be submitted to the following address:

Board of Forestry and Fire Protection Attn: Dennis O. Hall Regulations Coordinator P.O. Box 944246 Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection Room 1506-14 1416 9th Street Sacramento, CA

Comments may be faxed to the Board's office using the following number:

(916) 653-0989

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551,4552, and 4571 authorizes the Board to adopt such rules and regulations as it determines are reasonable necessary to enable it to implement, interpret, or make specific sections 4582, 4582.5 and 4571 of the Public Resources Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the Legislature's concern throughout the state relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In previous rule making actions, the Board adopted rules which set forth regulations for the protection of watersheds with threatened or impaired values as defined by the Board. These regulations are intended to move from a project-by-project analysis of impacts and mitigation development to a watershed level approach that analyzes conditions within a watershed and proposes mitigation measures on a site-specific basis. The previous regulations are currently being proposed to terminate on December 31, 2001. The Board has developed the following rules as an option to the previous rules to provide a watershed level evaluation.

14 CCR § 895

An abbreviation is added to this section for the Watershed Evaluation and Mitigation Addendum (WEMA).

14 CCR § 895.1

A definition is added to this section to clarify the meaning of the term "Limiting Factors for Anadromous Salmonids".

14 CCR §§ 916.13 [936.13, 956.13]

The WEMA process is provided as an alternative to compliance with the rules adopted for the protection of watersheds with threatened or impaired values as defined by the Board. The purpose of the WEMA is described as focusing on watershed evaluation and the development of site-specific mitigations. It is made clear that practices proposed in the WEMA must provide for the protection of the beneficial uses of water.

14 CCR §§ 916.13.1 [936.13.1, 956.13.1]

The WEMA submitter is given the option to conduct a pre – consultation with the stakeholders in the watershed that is to be evaluated. This includes agencies, landowners, and watershed groups. Where the submitter selects this option the results must be provided to the Director of the Department of Forestry and Fire Protection (Director) at the time the WEMA is submitted. The submitter will also provide responses to any concerns raised by the stakeholders.

14 CCR §§ 916.13.2 [916.13.2, 956.13.2]

The submitter is to submit a Notice of Preparation for a WEMA to the Director at least 60 days before submission of the document. The contents of the Notice of Preparation are set forth.

14 CCR §§ 916.13.3 [936.13.3, 956.13.3]

The Director is required to distribute the Notice of Preparation when received. The distribution is to the office of the County Clerk for the appropriate county; the local Ranger Unit Headquarters; and other locations deemed desirable and feasible to provide adequate public notice.

14 CCR §§ 916.13.4 [936.13.4, 956.13.4]

The responsibility for the WEMA submitter is described. This includes providing the name and address of the preparer; ensure those preparing the WEMA have the necessary scientific expertise; provide the preparer with complete and correct information on legal rights for the ownership; and sign the WEMA.

14 CCR §§ 916.13.5 [936.13.5, 956.13.5]

The requirement for the WEMA area of evaluation is set forth. The area of evaluation is to be no smaller than a second order watershed; no larger than a CalWater planning watershed, unless explained and justified; and must comprise a logical hydrologic unit.

14 CCR §§ 916.13.6 [936.13.6, 956.13.6]

The standards for the preparation of a WEMA are set forth. These standards include: a field evaluation, the sufficiency of information is guided by practicality and reasonableness, and WEMAs will use the adaptive management approach.

14 CCR §§ 916.13.7 [916.13.7, 956.13.7]

The required contents of the WEMA are set forth. This includes: a map of the WEMA evaluation area with specific items required, specific sediment sources must be shown on the map, aquatic habitat shown by type on a map, a synthesis of findings and conclusions about limiting factors for anadromous salmonids, and specifications for a 3-8 year monitoring program.

14 CCR §§ 916.13.8 [936.13.8, 956.13.8]

The Director is required to prepare a notice of submission. Within 2 working days the Notice must be forwarded to: the person submitting the WEMA, the appropriate office of the County Clerk, the local Ranger Unit Headquarters, other locations deemed desirable to provide adequate public notice, other public agencies in control of lands within the evaluation area, and posted on the Department web site.

14 CCR §§ 916.13.9 [936.13.9, 956.13.9]

A WEMA shall be submitted at least 60 days before the submission of any THPs that will rely on the WEMA. The WEMA is to be submitted in a standard digital format to assist the Department in the development of an electronic database.

14 CCR §§ 916.13.10 [936.13.10, 956.13.10]

Upon receipt of a WEMA the Director is to place a copy in a location available for public review. A copy of the WEMA is to be sent to the Department of Fish and Game (DFG), the appropriate California Water Quality Board (RWQCB), the Division of Mines and Geology (DMG), the Department of Parks and Recreation (DPR), the appropriate county planning agency, the Coastal Commission if the WEMA is in their jurisdiction. The WEMA must also be provided to those who request a copy in writing. The Director will invite and consider written comments on the WEMA. An interdisciplinary review team is to be established for the review of a WEMA.

<u>14 CCR §§ 916.13.11 [916.13.11, 956.13.11]</u>

At the conclusion of operations, the timber owner or owner's agent shall file an Expanded Completion Report that lists the evaluation generated prescriptions in the THP.

14 CCR §§ 916.13.12 [936.13.12, 956.13.12]

THP mitigation monitoring and watershed trend monitoring will be carried out according to a THP that incorporates a WEMA and as part of updating and re-using WEMA information for subsequent THPs. Options on accomplishing the monitoring are provided.

14 CCR §§ 916.13.13 [936.13.13, 956.13.13]

The information gathered for a WEMA from previous monitoring within the evaluation area shall be considered to identify impacts and develop mitigations for inclusion in subsequent THPs.

14 CCR §§ 916.13.14 [936.13.14, 956.13.14]

Once a plan incorporating a WEMA has been approved, subsequent plans with the WEMA evaluation area may incorporate the WEMA without having to meet the noticing requirement posted in previous rules in this notice.

14 CCR §§ 916.13.15 [936.13.15, 956.13.15]

The provisions for a WEMA shall not apply to a plan that is subject to an incidental taking permit based upon an approved Habitat Conservation Plan that addresses anadromous salmonids.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: The Department of Fish and Game, The State Water Resources Control Board, The Division of Mines and Geology, and the Department of Forestry and Fire Protection stated that they need 2 Person Years each to implement the WEMA process. The agencies estimate that the annual cost for those positions would be approximately \$800,000 annually. This includes operating and equipment dollars.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None

- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: None
- Potential cost impact on private persons or directly affected businesses. Assessment cost will depend on the scope of analysis, complexity, intensity of review, watershed scale, data availability, and many other variables. It will also have to consider what the costs would have been to prepare the watershed assessment portion of the existing Cumulative Effects Analysis (Board Technical Rule Addendum No. 2).

The cost of implementing mitigations is also difficult to assess. It is possible that a watershed evaluation could define operational practices, which would result in cost savings over prescriptive practices required under existing rules. It may also result in requiring operational practices with a greater cost than that required under existing rules. Regardless, since the mitigation's set forth under these rules are site specific, it is almost impossible to estimate what they would be let alone the actual cost.

- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulations do not require a report, which shall apply to businesses.

PLAIN ENGLISH DETERMINATION AND OVERVIEW

The Board has determined that the proposed regulations may affect small businesses.

Plain English Policy Overview

The Z'berg-Nejedly Forest Practice Act of 1973 (FPA) established the Legislature's intent to consider the public's need for long-term watershed protection, fisheries and wildlife. It directed the State Board of Forestry and Fire Protection to adopt rules to control unreasonable effects on the beneficial uses of the States waters and to maintain an effective and complete system of regulations for all timberland.

On March 15 and April 4, 2000, the Board adopted rules for the protection of threatened or impaired watersheds as defined by the Board. These rules become effective on July 1, 2000. They are currently being proposed to terminate on December 31, 2001. These rules are designed to look at the impact of timber operations on anadromous salmonids. They shift from a project to project evaluation of impacts and mitigation measures to a watershed level evaluation. The Board stated its intent to continue to develop regulations

that would provide evaluations at the watershed level. These newly developed rules are to serve as an optional approach to those rules that are specific to threatened and impaired watersheds until the Board has had an ample opportunity to consider full watershed analysis and rules to implement a watershed analysis approach throughout the State, if appropriate.

The newly developed rules are intended to provide a scientifically based evaluation of watersheds that have been defined by the Board as threatened or impaired watersheds. They are also intended to define the impacts of timber operations on the beneficial uses of water and to develop mitigation measures to significantly lessen the impacts. These new rules will use the concept of adaptive management to define site specific management practices necessary for the protection of the beneficial uses of water for the specified watershed.

Adaptive management will be guided by the results of compliance and effectiveness monitoring over time. Where the specific management practices are found not to be effective, based on the results of monitoring, they will be modified in the watershed evaluation. The watershed evaluation process has provision for public and agency review and comment. Once the watershed evaluation has been reviewed it can be used as an addendum to a Timber Harvesting Plan. It will fill two roles: 1) stand in place of a portion of the currently required Cumulative Effects Analysis, and 2) provide for an exemption from a portion of the currently in-place Threatened and Impaired Watershed rules.

Availability of the Text in Plain English

According to Government Code section 11346.2, (a)(1) an agency that adopts a regulation that affects small businesses must draft the regulation in plain English as defined in 11342(e). The Board has attempted to draft the regulations in plain English whenever possible, and non-familiar language is defined within the regulations. However, the Board has determined that it is not feasible to fully draft the regulations in plain English due to the technical nature of the regulations. Therefore, a non-controlling plain English summary is available from the agency contact person named in the notice.

To facilitate review, and provide for meaningful public participation in the rulemaking process, the *Informative Digest/Plain English Overview* for this notice and any future notices pertaining to the rule section changes referenced in this notice shall constitute the non-controlling plain English summary of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(12), the Board must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has determined that the proposed regulations may impact businesses. However, the Board has not identified any equally effective alternatives that would lessen any adverse impact on businesses at this time. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (ii) Consolidation or simplification of compliance and reporting requirements for businesses, (iii) The use of performance standards rather than prescriptive standards, or (iv) Exemption or partial exemption from regulatory requirements for businesses.

CONTACT PERSON

Questions about the proposed action, or requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, and modified text of the regulations; may be directed to:

Board of Forestry and Fire Protection Attn: Dennis O. Hall Regulations Coordinator P.O. Box 944246 Sacramento, CA 94244-2460

Telephone: (916) 653-9418 or,

(916) 653-8007

Fax: (916) 653-0989

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared a *Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

A copy of the express terms of the proposed action using <u>UNDERLINE</u> to indicate an addition to the California Code of Regulations and STRIKETHROUGH to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. As of this date, this notice is published in the *Notice Register*.

A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page:

http://www.fire.ca.gov/bof/board/board proposed rule packages.html.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) Requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Dennis O. Hall Regulations Coordinator Board of Forestry and Fire Protection

doh: 7/18/2000 File: 45 Day Notice